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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

TRUSTEES OF THE OPERATING
ENGINEERS PENSION TRUST,
TRUSTEES OF THE OPERATING
ENGINEERS HEALTH AND WELFARE
FUND, TRUSTEES OF THE
OPERATING ENGINEERS VACATION-
HOLIDAY SAVINGS TRUST,
TRUSTEES OF THE OPERATING
ENGINEERS TRAINING TRUST,
TRUSTEES OF THE OPERATING
ENGINEERS LOCAL 12 DEFINED
CONTRIBUTION TRUST, ENGINEERS
CONTRACT COMPLIANCE
COMMITTEE FUND, and SOUTHERN
CALIFORNIA PARTNERSHIP FOR
JOBS FUND,

Plaintiffs,

vs.

CONSOLIDATED STREET SWEEPING,
INC., a California corporation,

Defendant.

CASE NO.: 8:24-cv-795

**COMPLAINT FOR BREACH OF
WRITTEN COLLECTIVE
BARGAINING AGREEMENT AND
VIOLATION OF ERISA § 515 [29
U.S.C. § 1145]**

1 Plaintiffs, Trustees of the Operating Engineers Pension Trust, Trustees of the
2 Operating Engineers Health and Welfare Fund, Trustees of the Operating Engineers
3 Vacation-Holiday Savings Trust, Trustees of the Operating Engineers Training Trust,
4 Trustees of the Operating Engineers Local 12 Defined Contribution Trust, Engineers
5 Contract Compliance Committee Fund, and Southern California Partnership for Jobs
6 Fund, complain and allege:

7 **JURISDICTION AND VENUE**

8 1. This Court has jurisdiction of this case pursuant to section 502(e)(1) of
9 the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) [29
10 U.S.C. §1132(e)(1)], which grants the United States District Courts jurisdiction over
11 civil actions brought by a fiduciary pursuant to section 502(a)(3) of ERISA [29 U.S.C.
12 §1132(a)(3)] to redress violations or enforce the terms of ERISA or an employee
13 benefit plan governed by ERISA. Such jurisdiction exists without respect to the
14 amount in controversy or the citizenship of the parties, as provided in section 502(f) of
15 ERISA [29 U.S.C. §1132(f)].

16 2. This Court also has jurisdiction of this case pursuant to section 301(a) of
17 the Labor Management Relations Act of 1947, as amended (“LMRA”) [29 U.S.C.
18 §185(a)], which grants the United States original jurisdiction over suits for violation
19 of contracts between an employer and a labor organization in an industry affecting
20 commerce, without respect to the amount in controversy and the citizenship of the
21 parties.

22 3. Venue is proper in this Court pursuant to section 502(e)(2) of ERISA [29
23 U.S.C. § 1132(e)(2)], and section 301(a) of the LMRA [29 U.S.C. § 185(a)], in that
24 this is the district in which the Plaintiffs’ Trusts (defined below) are administered, the
25 signatory union maintains union offices, and where the contractual obligation is to be
26 paid.

27 4. To the extent this Complaint sets forth any state law claims, this Court
28 has supplemental jurisdiction over those claims pursuant to 28 U.S.C. §1367(a).

1 **PARTIES**

2 5. Plaintiffs, Trustees of the Operating Engineers Pension Trust, Trustees of
3 the Operating Engineers Health and Welfare Fund, Trustees of the Operating
4 Engineers Vacation-Holiday Savings Trust, Trustees of the Operating Engineers
5 Training Trust, and Trustees of the Operating Engineers Local 12 Defined
6 Contribution Trust (collectively, the “Trustees”), are the trustees of five express trusts
7 (collectively, the “Trusts”) created pursuant to written declarations of trust (the “Trust
8 Agreements”) between the International Union of Operating Engineers, Local Union
9 No. 12 (“Local 12”), and various multiemployer associations in the construction
10 industry in Southern California and Southern Nevada. The Trusts are now, and were
11 at all times material to this action, labor-management multiemployer trusts created and
12 maintained pursuant to section 302(c)(5) of the LMRA [29 U.S.C. § 186(c)(5)]. The
13 Plaintiffs, as trustees of the Trusts, are “fiduciar[ies]” with respect to the Trusts as
14 defined in section 3(21)(A) of ERISA [29 U.S.C. § 1002(21)(A)]. Plaintiff, Engineers
15 Contract Compliance Committee Fund, is established by Local 12 in accordance with
16 Section 6(b) of the Labor Management Cooperation Act of 1978 in order to improve
17 job security and organizational effectiveness. Plaintiff, Southern California
18 Partnership for Jobs Fund, is an industry-wide advancement fund established by the
19 employers and Local 12. Collectively, all plaintiffs are referred to herein as the
20 “Plaintiffs.”

21 6. At all times material herein, Local 12 has been a labor organization
22 representing employees in the building and construction industry in Southern
23 California and Southern Nevada, and a labor organization representing employees in
24 an industry affecting commerce within the meaning of § 301(a) of the Labor-
25 Management Relations Act of 1947, as amended [29 U.S.C. § 185(a)].

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1 7. Plaintiffs are informed and believe, and thereon allege, that at all times
2 material herein, Consolidated Street Sweeping, Inc., a California corporation
3 (“Defendant”) was and is a California corporation with its principal place of business
4 in Fullerton, California.

5 **EXECUTION OF BARGAINING AGREEMENT**
6 **AND STATUS OF PARTIES**

7 8. On or about January 9, 2017, Defendant executed and delivered a written
8 collective bargaining agreement (the “Master Agreement”) to Local 12, whereby
9 Defendant agreed to be bound by the terms and conditions, with certain exceptions, of
10 certain written and existing collective bargaining agreements between various
11 multiemployer associations and Local 12. In particular, Defendant agreed to be bound
12 by the written Master Agreement in effect between Local 12 and the Association. The
13 Master Agreement provides that Defendant shall be bound by any renewals or
14 extensions thereto. The Master Agreement further provides that Defendant shall
15 continue to be bound by the Master Agreement on a year to year basis after its
16 expiration.

17 9. On or about January 9, 2017, Defendant executed written
18 acknowledgments and acceptances of each of the Trust Agreements.

19 10. Defendant is an “*employer*,” as that term is understood in the Master
20 Agreement and related Trust Agreements.

21 11. Defendant is an “*employer*” as defined and used in section 3(5) of ERISA
22 [29 U.S.C. § 1002(5)], and therefore, Defendant is “*obligated to make contributions to*
23 *a multiemployer plan*” within the meaning of section 515 of ERISA [29 U.S.C. §
24 1145]. Plaintiffs are informed and believe, and thereon allege, that Defendant is also
25 an “*employer*” engaged in “*commerce*” in an “*industry affecting commerce*,” as those
26 terms are defined and used in sections 501(1) and 501(3) of the LMRA [29 U.S.C.
27 §§ 142(1), 142(3)], and within the meaning and use of section 301(a) of the LMRA
28 [29 U.S.C. § 185(a)].

CLAIM FOR RELIEF

**Breach of Written Collective Bargaining Agreement and
Violation of § 515 of ERISA [29 U.S.C. § 1145]**

12. Plaintiffs hereby refer to, and incorporate herein, paragraphs 1 through 11 above, inclusive of any and all subparagraphs, to the same effect as if set forth verbatim.

13. Section 515 of ERISA [29 U.S.C. § 1145], provides “[e]very employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.”

14. Defendant is an “employer” as defined and used in § 3(5) of ERISA [29 U.S.C. § 1002(5)], and is “obligated to make contributions to a multiemployer plan” within the meaning and use of section 515 of ERISA [29 U.S.C. § 1145].

15. By the terms and provisions of the Master Agreement and related Trust Agreements, and at all times material herein:

15.1 Defendant agreed to prepare and submit true, complete, and accurate written monthly contribution reports (“Monthly Reports”) to Plaintiffs in a timely manner showing the identity of its employees performing work covered by the Master Agreement, the number of hours worked by or paid to these employees, and based upon the hours worked or amounts paid to employees, the proper calculation of the fringe benefit contributions due for such employees. At all times material herein, Defendant has been obligated to submit monthly reports and pay fringe benefit contributions to Plaintiffs at their place of business in Pasadena, California, on or before the 10th day of each successive month;

15.2 Defendant agreed to permit Plaintiffs and their agents to conduct audits of payroll and related records in order to determine if fringe benefit contributions have been properly paid pursuant to the Master Agreement and related

1 Trust Agreements; and

2 15.3 Defendant agreed to pay to Plaintiffs fringe benefit contributions,
3 benefits and/or withholdings on a monthly basis, and at specified rates for each hour
4 worked by, or paid to, applicable employees. These amounts are due and payable at
5 the Trusts' administrative offices in Pasadena, California.

6 16. Defendant submitted Monthly Reports to Plaintiffs reflecting work
7 performed by Defendant's employees during the months of October 2023 through
8 February 2024. By those Monthly Reports, Defendant admitted that it owed Plaintiffs
9 fringe benefit contributions totaling at least \$27,572.93, but Defendant failed to pay to
10 Plaintiffs the fringe benefit contributions due in violation of the Master Agreement
11 and Trust Agreements, and its statutorily mandated obligation under section 515 of
12 ERISA [29 U.S.C. § 1145], to timely pay fringe benefit contributions to Plaintiffs
13 pursuant to the Master Agreement and related Trust Agreements for that work.
14 Failure to pay these contributions is a breach of the Master Agreement and Trust
15 Agreements, and a violation of section 515 of ERISA [29 U.S.C. § 1145]. The
16 amount of \$27,572.93 in fringe benefit contributions remains due by Defendant for the
17 work months of October 2023 through February 2024. This amount is due and
18 payable at Plaintiffs' administrative offices in Pasadena, California.

19 17. Plaintiffs are informed and believe, and based thereon allege, that
20 Defendant has failed to pay certain additional amounts of fringe benefit contributions
21 not presently known to Plaintiffs for the month of February 2024 forward. These
22 additional amounts will be established by proof at the trial herein.

23 18. Defendant is "*delinquent*," as that term is used in the Master Agreement
24 and related Trust Agreements.

25 19. Plaintiffs are informed and believe, and based thereon allege, that there is
26 no legal excuse for Defendant's breach of its obligations under the Master Agreement
27 and related Trust Agreements in violation of section 515 of ERISA [29 U.S.C.
28 § 1145].

1 20. Defendant has failed to timely pay contributions and other amounts owed
2 to Plaintiffs, accruing since August 2023. Pursuant to the Master Agreement, and
3 Trust Agreements, Defendant agreed that in the event Defendant failed to pay fringe
4 benefit contributions, or otherwise comply with the terms and provisions of the Master
5 Agreement and related Trust Agreements, Defendant would be considered delinquent
6 with the Trusts and would pay Plaintiffs the greater of \$25.00 per month or ten percent
7 (10%) of the total amount then due as liquidated damages for each delinquency.

8 21. Pursuant to section 502(g)(2) of ERISA [29 U.S.C. § 1132(g)(2)], in any
9 action by a fiduciary in which judgment is found in favor of the plan, the Court shall
10 award the plan: (i) the unpaid contributions, (ii) interest on the unpaid contributions,
11 (iii) an amount equal to the greater of (a) interest on the unpaid contributions or (b)
12 liquidated damages provided for under the plan in an amount not in excess of 20% (or
13 such higher percentage as may be permitted under federal or state law) of the amount
14 determined by the Court to be unpaid contributions, (iv) reasonable attorneys' fees
15 and costs, and (v) such other legal or equitable relief as the Court deems appropriate.
16 For purposes of section 502(g)(2) of ERISA [29 U.S.C. § 1132(g)(2)], interest on
17 unpaid contributions shall be determined by using the rate provided under the plan or,
18 if none, the rate prescribed under section 6621 of the Internal Revenue Code of 1986,
19 as amended, 26 U.S.C. § 6621.

20 22. Pursuant to the Master Agreement, related Trust Agreements, and section
21 502(g)(2)(C) of ERISA [29 U.S.C. § 1132(g)(2)(C)], Defendant owes Plaintiffs
22 liquidated damages on all unpaid and untimely paid fringe benefit contributions. The
23 exact amount of liquidated damages will be established by proof.

24 23. Pursuant to the Master Agreement, related Trust Agreements, and section
25 502(g)(2)(B) of ERISA [29 U.S.C. § 1132(g)(2)(B)], Defendant owes Plaintiffs
26 interest at the rates established pursuant to 26 U.S.C. § 6621 from the respective due
27 dates on all unpaid fringe benefit contributions and other amounts due. The exact
28 amount of interest owed by Defendant to Plaintiffs will be established by proof.

24. By the Master Agreement and related Trust Agreements, Defendant agreed to pay Plaintiffs all legal and auditing costs in connection with the collection of any delinquency, whether incurred before or after litigation is, or was, commenced.

25. It has been necessary for Plaintiffs to engage legal counsel for the purpose of collecting said contributions and damages, and Plaintiffs are entitled to their reasonable attorneys' fees in connection therewith pursuant to the Agreement, Master Agreement, Trust Agreements, and section 502(g)(2)(D) of ERISA [29 U.S.C. § 1132(g)(2)(D)]. The exact amount of the legal fees due and payable has not been ascertained at this time. These amounts shall be established by proof.

26. Pursuant to section 502(g)(2) of ERISA [29 U.S.C. § 1132(g)(2)(E)], the Court may grant such other legal or equitable relief as the Court deems appropriate. As part of Plaintiffs' judgment, Plaintiffs shall request the Court to:

26.1 Order Defendant to post and deliver either a good faith deposit, or a performance bond issued in favor of Plaintiffs in an amount determined by the Court to be appropriate, and

26.2 Order the creation of a constructive trust on all applicable property and order the transfer of the applicable property to the Trusts, and

26.3 Order Defendant to pay Plaintiffs all amounts due to the Trusts, including, but not limited to, all unpaid contributions, benefits, withholdings, damages, legal fees, audit costs and other expenses and damages incurred.

PRA YER

WHEREFORE, as to all Claims for Relief, Plaintiffs pray for judgment against Defendant as follows:

1. For unpaid fringe benefit contributions in the sum of \$27,572.93, plus additional amounts as proved;

2. For liquidated damages pursuant to section 502(g)(2)(C) of ERISA in amounts as proved;

1 3. For interest pursuant to section 502(g)(2) of ERISA [29 U.S.C.
2 § 1132(g)(2)], and section 6621 of the Internal Revenue Code of 1986, as amended,
3 26 U.S.C. § 6621, or at the legal rate, in amounts as proved;

4 4. For audit costs in amounts as proved;

5 5. For reasonable attorneys' fees and costs of suit incurred;

6 6. For a good faith deposit or performance bond in favor of Plaintiffs in an
7 amount equal to the total amount determined by this Court to be due to Plaintiffs, as
8 proved; and

9 7. For such additional relief as this Court deems just and proper.

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11 DATED: April 11, 2024

LAQUER, URBAN, CLIFFORD & HODGE LLP

12
13 By: /s/ - Andrew Quinn Thompson

14 Andrew Quinn Thompson, Counsel for
15 Plaintiffs, Trustees of the Operating Engineers
16 Pension Trust, et al.

17
18 **WAIVER OF JURY RIGHT**

19 Plaintiffs hereby waive a jury trial in this action.

20
21 DATED: April 11, 2024

LAQUER, URBAN, CLIFFORD & HODGE LLP

22
23 By: /s/ - Andrew Quinn Thompson

24 Andrew Quinn Thompson, Counsel for
25 Plaintiffs, Trustees of the Operating Engineers
26 Pension Trust, et al.